



2001-218

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

BILL PRYOR  
ATTORNEY GENERAL

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

July 9, 2001

Honorable Donald L. Parker  
Executive Director  
Board of Pardons and Paroles  
P.O. Box 302405  
Montgomery, AL 36130-2405

Pardons and Paroles Board – Sentences  
– Probation and Parole

The Board of Pardons and Paroles may properly treat consecutive sentences as one total term or sentence for determining whether a majority vote or unanimous agreement is required to grant parole.

Dear Mr. Parker:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Pardons and Paroles.

QUESTIONS

May the Board of Pardons and Paroles (“the Board”) treat consecutive sentences as one total term for determining eligibility for parole by majority vote?

In consecutive sentences, must the inmate serve one-third or ten years, whichever is the lesser, of the last sentence before the Board of Pardons and Paroles can grant parole by majority vote?

FACTS AND ANALYSIS

Section 15-22-28(e) of the Code of Alabama states:

The board shall not grant a parole to any prisoner who has not served at least one third or 10 years of his sentence, whichever is the lesser, except by a unanimous affirmative vote of the board.

ALA. CODE § 15-22-28(e) (1995). This section is susceptible to three rational interpretations. Your opinion request poses a hypothetical of a prisoner with three consecutive fifteen-year sentences. The three interpretations of section 15-22-28(e) of the Code of Alabama would require a majority vote date at ten, fifteen, and thirty-five years.

The ten-year interpretation treats the phrase “at least one third or 10 years of his sentence, whichever is the lesser” as meaning at least one third or ten years of his *total* sentence, whichever is lesser. In other words, the three consecutive fifteen-year sentences would amount to a total sentence of forty-five years. One-third of that total sentence is fifteen years. Therefore, the Board could vote in ten years because that is the lesser of the two. This is the way the Board has consistently applied this statute for over forty-nine years.

The fifteen-year interpretation treats the phrase “at least one third or 10 years of his sentence, whichever is the lesser” as meaning at least one third or ten years of *each* sentence, provided that such portion shall be added together for each such sentence to determine the majority vote date for the total sentence. In other words, five years is one-third of fifteen years, and five years is less than ten years. The five years on each of the three fifteen-year sentences are added together to establish a majority vote date of fifteen years.

The thirty-five year interpretation treats the phrase “at least one third or 10 years of his sentence, whichever is the lesser” as meaning “at least one third or ten years of *the longest running* sentence, whichever is lesser.” In other words, the prisoner would not be eligible for majority vote parole during either of the first two fifteen-year sentences. He could only be paroled by unanimous vote after he served five years (one-third) of the final fifteen-year sentence. He or she would have to serve thirty-five years before a majority of the Board could grant parole.

In order to determine which of these three interpretations implements the intent of the Legislature, we need to consider the history of section 15-22-28(e) of the Code of Alabama. In 1939, the Constitution of Alabama was amended, transferring the power to grant pardons and paroles from the Governor to the Legislative Branch. Amendment No. 38 expressly granted to the Legislature two sets of powers: the power to "provide for" and the power to "regulate" the administration of pardons and paroles. Act No. 275 of the 1939 Legislative Session provided for the administration of pardons and paroles by creating an independent board and spelling out its powers. 1939 Ala. Acts No. 275, 426. Act No. 21, in 1951, created the Special Legislative Committee Investigating Pardons and Paroles, as an exercise of its power to regulate the administration of pardons and paroles. 1951 Ala. Acts No. 21, 194.

The provision now appearing as section 15-22-28(e) of the Code of Alabama was enacted in 1951, after the special committee conducted a thorough investigation of irregularities at the Parole Board. This provision was first enacted in section 8 of Act No. 599. 1951 Ala. Acts No. 599, 1030. The Committee Report made eleven legislative recommendations, designated by the letters "A" through "K." Recommendation "H" stated: "The Board should be prohibited from paroling any prisoner until he has served at least one third of his sentence *or ten years in the penitentiary*, whichever is the lesser, except by a unanimous affirmative vote of the Board." *Report of the Special Legislative Committee Investigating Pardons and Paroles* at 3 (1951). Prior to enactment of Act No. 599, a majority of the Board could grant parole at any point in the sentence.

It appears that the Legislature intended to ensure that each prisoner served enough time to allow the Board to make a reasonable evaluation of his progress toward rehabilitation. Any of the three interpretations hypothesized is consistent with this intention. The Committee that drafted the statute and urged its adoption told their colleagues that they believed a reasonable benchmark was "one third of the sentence *or ten years in the penitentiary*, whichever is the lesser." (See Committee Report, "Legislative Recommendations," ¶H, p. 6.). We believe great deference should be given to the longstanding interpretation of the Board. Moreover, the interpretation is consistent with what the Legislature intended.

The Legislature has amended and reenacted the parole statutes several times since 1951. If the Legislature disagreed with the Board's administrative interpretation of this statute, it could have amended the statute to clear up the ambiguity. It is reasonable to infer that the Legislature intended, when it enacted the 1975 Code, to adopt each section

Honorable Donald L. Parker  
Page 4

contained in that Code as each such section was interpreted at that time.  
*See Doss v. State*, 220 Ala. 30, 123 So. 231 (1929).

### CONCLUSION

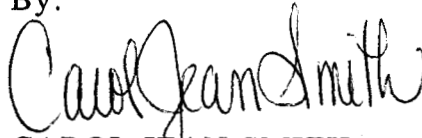
The Board may properly treat consecutive sentences as one total term or sentence for determining whether a majority vote or unanimous agreement is required to grant parole. Once an inmate has served one-third or ten years of his total sentence, whichever is the lesser, a majority of the Board may lawfully grant parole while complying with the other applicable statutes.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR  
Attorney General

By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive, flowing style.

CAROL JEAN SMITH  
Chief, Opinions Division

BP/CJS/GOG  
45541v2/25168